

DETERMINATION OF MERGER NOTIFICATION M/22/033 – MM/ESNT/ESSENTRA

Section 21 of the Competition Act 2002

Proposed acquisition by MM Packaging GmbH of sole control of ESNT Packaging & Securing Solutions Limited and Essentra Packaging US, Inc.

Dated: 5 September 2022

Introduction

1. On 26 July 2022, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed acquisition whereby MM Packaging GmbH (“MM Packaging”) would acquire 100% of the shares in, and sole control over, ESNT Packaging & Securing Solutions Limited and its affiliated companies (including the Irish subsidiary, Essentra Packaging Ireland Limited), as well as 100% of the shares in Essentra Packaging US Inc. (collectively, the “Target”) from Essentra International Limited and US Newco LLC (the “Sellers”).

The Proposed Transaction

2. The Proposed Transaction will be implemented pursuant to a Share Purchase Agreement (“SPA”) dated 24 June 2022 between the Sellers, MM Packaging, and MM Packaging’s parent company Mayr-Melnhof Karton AG (“MM Karton”).
3. Pursuant to the SPA, MM Packaging will acquire the entire issued share capital of the Target from the Sellers. Following the implementation of the Proposed Transaction, MM Packaging will have sole control of the Target.

The Undertakings Involved

The Acquirer – MM Packaging

4. MM Packaging is a wholly owned subsidiary of MM Karton. MM Packaging is active in the production and supply of packaging products including folding cartons, labels and leaflets. The

parties state that the group of companies comprising MM Karton and its subsidiaries (“MM Group”) is divided into two divisions – MM Board & Paper GmbH (“MMBP”), responsible for MM Group’s cartonboard activities, and MM Packaging, responsible for MM Group’s secondary packaging activities, primarily being the production of folding cartons.

5. MM Packaging is active in the State through limited sales of: upstream cartonboard (including virgin fibre board, recycled fibre board, white top coated recycled liner and uncoated fine paper), folding cartons (used primarily for food and beverage products, and to a limited extent other products including pharmaceutical products), and leaflets for use in pharmaceutical products. MM Packaging does not have any production facilities in the State.
6. For the financial year ending 31 December 2021, MM Group’s worldwide turnover was approximately €[...] of which approximately €[...] was generated in the State.

The Target

7. The Target is a global fibre-based secondary packaging provider that is primarily active in the production and supply of folding cartons, leaflets and literature, labels, and foils and other products.¹
8. The Target is active in the State in the sales of folding cartons (used for pharmaceutical products and to a more limited extent for beauty and personal care products and toothbrush cartons), leaflets for use in pharmaceutical products and labels for use in pharmaceutical products. The Target has three properties in the State used for manufacturing purposes², and two other properties in the State used for warehousing and offices.
9. For the financial year ending 31 December 2021, the Target’s worldwide turnover was approximately €[...] of which approximately €[...] was generated in the State.³

¹ The category of ‘foils and other products’ includes printed medical papers and foils for blister applications, bags and sacks.

² Located at Muskerry East, Ovens, Co. Cork; Unit 7 Airway Industrial Estate, Santry, Dublin 9; and Unit 8 Airway Industrial Estate, Santry, Dublin 9.

³ Figures calculated at the average exchange GBP1 = EUR 1.1636, using the ECB exchange rate for period 4 January 2021 to 31 December 2021.

Rationale for the Proposed Transaction

10. The parties state the following in the notification:

“The acquisition of the Target implements MM Packaging's strategy to grow in resilient growth sectors such as pharmaceutical secondary packaging, including in pharmaceuticals folding cartons & leaflets. The Target's activities, which are focused on the secondary pharmaceutical packaging space, are complementary to MM Packaging's footprint, which will allow MM Packaging to diversify its activities in Europe. Geographically, the Target's sites in Europe and North America complement MM Packaging's current presence in the Nordics and in France. The acquisition will also complement MM Group's footprint with sites in the US.”

Third Party Submissions

11. No third party submission was received.

Competitive Analysis

Horizontal Overlap

12. There are two potential areas of horizontal overlap between the activities of the parties in the State:

- a. the supply of folding carton packaging; and
- b. the supply of leaflets.

13. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant product and geographic markets since its conclusion on the competitive impact of the Proposed Transaction will be unaffected regardless of the market definition adopted. For the purpose of its assessment of the likely competitive impact of the Proposed Transaction, the Commission has considered the potential product and geographic markets described below.

Relevant product market

14. Within the EU, MM Group is active in the production of cartonboard (through MMBP), and in the supply of consumer packaging (primarily folding cartons) and labels, leaflets, paper bags,

tipping paper,⁴ and tear tape (through MM Packaging). The Target is active in the production and supply of folding cartons, leaflets and literature, labels, and foils and other products.⁵

15. In the State, the activities of the parties overlap only in relation to the supply of folding cartons and leaflets, particularly folding cartons and leaflets for pharmaceutical end-use. The Commission and the European Commission (“EC”) have previously considered the relevant product markets for both folding cartons and leaflets, respectively.
16. In its determination in *M/14/034 – ESNT International Limited / Blue Newco 1 B.V.*⁶, the Commission assessed the competitive impact of that proposed transaction by reference to the overlapping activities of the parties in that case (namely the supply of secondary paper-based packaging solutions to the pharmaceutical sector, particularly cartons, leaflets and labels) but considered it unnecessary to define precise relevant product markets and thus ultimately left the product market definition open.
17. In its decision in Case M.8421 – *Westrock/MPS*⁷, the EC considered potential product markets for paperboard, folding cartons, and package inserts (i.e., leaflets and booklets). Regarding folding cartons, the EC held that:

“based on the information collected in the market investigation, it appears plausible that the market for folding cartons can be segmented by end-use, and that folding cartons for packaging pharmaceutical products represent a distinct market from folding cartons used for packaging other products, such as beverages.”

Ultimately, however, the EC left the final product market definitions in relation to paperboard, folding cartons, and package inserts open as the EC considered that the proposed transaction in that case did not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.

18. In its decision in Case M.10122 – *Mayr-Melnhof Karton / Kotkamills*⁸ (“MM/Kotkamills”), which involved MM Karton, the EC assessed the question of product market definition in

⁴ Tipping paper is the outer wrapping of the filter section of a cigarette. It is a fundamental component of a cigarette needed in order to unite the tobacco rod with the filter tip.

⁵ Supra, n. 2.

⁶ The Commission’s determination is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-14-034-Essentra-Clondalkin-Determination.pdf>.

⁷ The EC’s decision is available at: https://ec.europa.eu/competition/mergers/cases/decisions/m8421_306_3.pdf.

⁸ The EC’s decision is available at: https://ec.europa.eu/competition/mergers/cases1/202132/m10122_457_3.pdf.

respect of: (i) cartonboard; and (ii) folding boxes. Regarding folding boxes, the EC ultimately left open the question of the exact product market definition as between an overall market for folding boxes and markets for sub-segments distinguished by end-use. However, the EC analysed the effects of the proposed transaction in that case on the basis that there were separate markets for folding boxes with the following different end-uses: (i) food; (ii) beverages; (iii) tobacco; (iv) cosmetics and personal hygiene; (v) pharmaceuticals; and (vi) household, noting that no affected markets arose if considering an overall market for folding boxes not distinguished by end-use. In its decision in Case M.10206 – *Mayr-Melnhof Karton/International Paper (Poland)*⁹ (“*MM/IP*”), which also involved MM Karton, the EC took a similar approach to the potential market for folding boxes as in *MM/Kotkamills* and ultimately left open the exact product market definition.

19. In this case, it is not necessary for the Commission to define the precise relevant product markets since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the potential product markets are defined more narrowly (i.e., (i) the supply of folding carton packaging for pharmaceutical end-use and (ii) the supply of leaflets for pharmaceutical end-use) or more broadly (i.e., (i) the supply of folding carton packaging overall and (ii) and the supply of leaflets overall). For the purpose of assessing the likely competitive effects of the Proposed Transaction, the Commission has analysed its impact by reference to both the broader and narrower potential product markets.

Relevant geographic market

20. In relation to the market for the supply of folding cartons, in previous cases the EC has ultimately left the geographic market definition open.¹⁰ In its market investigations in *MM/IP* and *MM/Kotkamills*, the EC found that only a minority of suppliers were in the same country as their customers, with the vast majority of customers participating in tenders at EEA-level and some at worldwide level.
21. With regard to leaflets, in *Westrock/MPS* the EC left the geographic market definition for package inserts (i.e., as noted above, leaflets and booklets) open, but also found that a majority of pharmaceutical customers would source package inserts internationally if the price of their current supplier increased by 5-10%.

⁹ The EC’s decision is available at: https://ec.europa.eu/competition/mergers/cases1/202138/m10206_389_3.pdf.

¹⁰ See the EC’s decisions in *Westrock/MPS*, *MM/IP*, and *MM/Kotkamills*.

22. In this instance, it is not necessary for the Commission to define the precise relevant geographic markets since its conclusion on the competitive impact of the Proposed Transaction will be unaffected regardless of whether the relevant market is defined more narrowly (e.g., the State) or more broadly (e.g., the EEA). For the purpose of assessing whether the Proposed Transaction is likely to result in a substantial lessening of competition, the Commission has analysed its impact by reference to the narrowest possible potential geographic market, i.e., the State.

Conclusion on relevant market definition

23. For the purpose of its analysis of the Proposed Transaction, the Commission has assessed the activities of the parties in the following potential markets:

- a) the supply of folding carton packaging in the State;
- b) the supply of folding carton packaging for pharmaceutical end-use in the State;
- c) the supply of leaflets in the State; and
- d) the supply of leaflets for pharmaceutical end-use in the State.

Horizontal competitive assessment

The supply of folding carton packaging

Table 1: Parties' estimates of shares of sales in the supply of folding carton packaging in the State and EEA, 2021

	MM Packaging		Target		Total	
	Turnover (in million EUR)	Share	Turnover (in million EUR)	Share	Total market size (in million EUR)	Combined share of the parties
2021 (Ireland)						
Folding cartons (overall)	[...]	[0-10]%	[...]	[10-20]%	158.4	[20-30]%
Folding cartons (healthcare & pharma)	[...]	[0-10]%	[...]	[20-30]%	90.1	[30-40]%
2021 (EEA)						
Folding cartons (overall)	[...]	[0-10]%	[...]	[0-10]%	19,714	[0-10]%
Folding cartons (healthcare & pharma)	[...]	[0-10]%	[...]	[0-10]%	1,997	[0-10]%

Source: Table 2 of the notification (page 23), Table 3 of the notification (page 24), and email from MM Packaging's legal advisors to the Commission of 23 August 2022.

24. In the notification, the parties provided their estimated shares of sales in relation to the supply of folding carton packaging. In the State in 2021, MM Packaging had an estimated share of [0-10]% and the Target had an estimated share of [10-20]% in this sector. In the EEA in 2021, the parties estimated that MM Packaging had a share of [0-10]% and the Target had a share of [0-10]% in this sector. Thus, following the Proposed Transaction, MM Packaging would have a share of approximately [20-30]% in this sector in the State and a share of [0-10]% in this sector in the EEA.
25. As discussed in paragraph 30 below, the parties identified their competitors in the State for the supply of folding cartons for the pharmaceutical sector as including Westrock¹¹, Colorman¹², MSO Cleland¹³, Palladio¹⁴, Boxpak¹⁵, Saica¹⁶, Dollard Packaging¹⁷, Esmark Finch¹⁸, Label Craft¹⁹, Priory Press²⁰, Cube²¹, Impact²², Stephen Gould²³ and Impress Printing Works²⁴. As such, following the implementation of the Proposed Transaction, MM Packaging will continue to be constrained by competitors in this sector and the presence of these other players in this sector provides many alternatives to which customers can switch.
26. As discussed in paragraph 20 above, in previous cases the folding carton packaging sector has been assessed by reference to an EEA-wide geographic area. However, even having regard to the narrowest possible geographic reference area, namely the State, MM Packaging will hold a share of approximately [20-30]% of the sales in this sector following the Proposed Transaction. Although this is a substantial increase from MM Packaging's current share of sales in this sector of [0-10]%²⁵, the Commission considers that it is unlikely to significantly alter the existing structure of competition in this sector.

¹¹ WestRock Company ("Westrock").

¹² Colorman (Ireland) Limited ("Colorman").

¹³ MSO Cleland Ireland Limited.

¹⁴ Palladio Ireland Packaging Solutions Limited ("Palladio").

¹⁵ Boxpak Limited.

¹⁶ Saica Pack Ireland Limited.

¹⁷ Dollard Packaging Limited.

¹⁸ Esmark Finch Limited.

¹⁹ Label Craft is a business name owned by Poolville Limited.

²⁰ Priory Press Packaging Limited.

²¹ Cube Logistics Limited.

²² Impact Packaging Limited.

²³ Stephen Gould of Ireland Limited

²⁴ Impress Printing Works Limited ("Impress").

²⁵ See Table 1.

27. Based on the information and evidence available to it, the Commission considers that the Proposed Transaction is unlikely to give rise to any horizontal competition concerns in relation to the supply of folding carton packaging in the State for the reasons outlined above.
28. For completeness, a significant proportion of the parties' activities in the State relates to the provision of folding carton packaging for pharmaceutical end-use. Based on the parties' estimates of shares of sales provided in the notification, in the State in 2021 MM Packaging held a minimal share of [0-10]% and the Target held a [30-40]% share in this sector.
29. Additionally, with respect to the provision of folding carton packaging for pharmaceutical end-use in the EEA in 2021, MM Packaging held a share of approximately [0-10]% and the Target held a [0-10]% share. As in the similar case of the overall folding carton packaging sector, given MM Packaging's low market share in folding carton packaging for pharmaceutical end-use, the Proposed Transaction does not represent a substantial increase in concentration in the sector and is unlikely to significantly alter the existing structure of competition in this sector in the State.
30. Additionally, pharmaceutical customers can continue to avail of different suppliers, in particular those in parts of Europe outside the State, meaning MM Packaging will continue to be constrained by competitors both in the State and the EEA in this sector. The EC has previously held in its decision in *Westrock/MPS* that customers in the State do not face significant barriers to switching suppliers in this sector, and that suppliers are constrained by competitors in other segments.²⁶
31. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in relation to the supply of folding carton packaging for pharmaceutical end-use in the State.

²⁶ See *Westrock/MPS*.

The supply of leaflets

Table 2: Parties' estimates of shares of sales in the supply of leaflets in the State and EEA, 2021

	MM Packaging		Target		Total	
	Turnover (in million EUR)	Share	Turnover (in million EUR)	Share	Total market size (in million EUR)	Combined share of the parties
2021 (Ireland)						
Leaflets (overall)	[...]	[0-10]%	[...]	[10-20]%	68.1	[10-20]%
Leaflets (healthcare & pharma)	[...]	[0-10]%	[...]	[20-30]%	51	[20-30]%
2021 (EEA)						
Leaflets (overall)	[...]	[0-10]%	[...]	[0-10]%	N/A	N/A
Leaflets (healthcare & pharma)	[...]	[0-10]%	[...]	[0-10]%	855	[0-10]%

Source: Table 2 of the notification (page 23) and Table 3 of the notification (page 24).

32. In the notification, the parties provided their estimated shares of sales in relation to the supply of leaflets in the EEA and in the State. In the State in 2021, MM Packaging had a minimal share of [0-10]% and the Target had an estimated share of [10-20]% in this sector. In the EEA in 2021, the parties estimated that MM Packaging had a share of [0-10]% and the Target had a share of [0-10]%. Thus, following the Proposed Transaction, MM Packaging would have a share of approximately [10-20]% in this sector in the State and a share of [0-10]% in this sector in the EEA.

33. In the notification, the parties noted the following competitors in relation to the supply of leaflets in the State in 2021, namely: MCC²⁷, Colorman, Westrock, KPW Design and Print²⁸, Fineprint²⁹, Label Craft, Impress, and Palladio. As such, following the implementation of the Proposed Transaction, MM Packaging will continue to be constrained by competitors in this sector in the State. Additionally, many suppliers of leaflets in the EEA either have the capacity to supply or do currently supply their products in the State, such as Graphic Packaging³⁰,

²⁷ Multi-Color Corporation.

²⁸ K.P.W. Business Forms Limited.

²⁹ Fine Print Limited.

³⁰ Graphic Packaging International Limited

Autajon³¹, Nosco³², Edelmann³³ and LGR Packaging. Therefore, post-Transaction MM Packaging will also be constrained by competitors at a European level.

34. As discussed in paragraph 21 above, in previous cases the leaflets sector has been assessed by reference to an EEA-wide geographic area. However, even having regard to the narrowest possible geographic reference area, namely the State, MM Packaging will hold a share of approximately [10-20]% of the sales in this sector following the Proposed Transaction. Although this is a substantial increase from MM Packaging's current share of sales in this sector of [0-10]%,³⁴ it is unlikely to significantly alter the existing structure of competition in this sector.
35. Based on the information and evidence available to it, the Commission considers that the Proposed Transaction is unlikely to give rise to any horizontal competition concerns in relation to the supply of leaflets in the State for the reasons outlined above.
36. For completeness, a significant proportion of the parties' activities in the State relate to the provision of leaflets for pharmaceutical end-use. Based on the parties' estimates of shares of sales provided in the notification, in the State in 2021 MM Packaging held a share of [0-10]% and the Target held a [20-30]% share in this sector. Additionally, in the EEA in 2021 MM Packaging held a share of approximately [0-10]% and the Target held a [0-10]% share. As in the similar case of the overall market for leaflets, given MM Packaging's low market share in the provision of leaflets for pharmaceutical end-use, the Proposed Transaction does not represent a substantial increase in concentration in the sector and is unlikely to significantly alter the existing structure of competition in this sector in the State.
37. Additionally, pharmaceutical customers can continue to avail of different suppliers, with the EC in its decision in *Westrock/MPS* finding that there are several established players in the supply of package inserts (i.e., leaflets and booklets) with pharmaceutical end-use in Ireland.³⁵ Moreover, the EC found that most pharmaceutical customers surveyed in that case would seek to source an international supplier for package inserts if suppliers in the State increased their prices by 5-10%.³⁶ Thus, following the implementation of the Proposed Transaction, MM

³¹ Autajon Group

³² Nosco, Inc.

³³ Edelmann GmbH

³⁴ See Table 2.

³⁵ See *Westrock/MPS*.

³⁶ See *Westrock/MPS*.

Packaging will continue to be constrained by competitors both in the State and EEA in this sector.

38. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in relation to the supply of leaflets for pharmaceutical end-use in the State.

Conclusion on horizontal competitive assessment

39. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in any market for goods or services in the State.

Vertical Overlap

40. The parties state in the notification that there is an existing vertical relationship between MM Packaging and the Target because MM Group, through MMBP, supplies the Target with small amounts of white lined chipboard (“WLC”)³⁷ (sales of €[...] in 2021) and white top coated liner³⁸ (sales of €[...] in 2021). The Commission considers this represents minimal sales in the State.

41. In light of the minimal nature of this vertical overlap between the activities of the parties, the Commission considers that the Proposed Transaction is unlikely to raise any vertical competition concerns in the State.

Conclusion on vertical assessment

42. In light of the above the Commission considers that the Proposed Transaction is unlikely to lead to any vertical competition concerns in any market for goods or services in the State.

Conclusion

43. On the basis of its analysis as set out above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

³⁷ WLC is a type of cartonboard made from recycled fibre and used for packaging for different types of products (e.g. food, cosmetics, pharmaceuticals, etc.).

³⁸ Particularly recycled liner. This is applied as cover layers for the production of corrugated packaging and cartonboard, used for certain folding carton products incorporating microflute. White top coated liner is also known as ‘LIN’.

Ancillary Restraints

44. Clause 16.1 of the SPA imposes certain non-compete and non-solicitation obligations on the Sellers. The duration of these non-compete and non-solicitation obligations does not exceed the maximum duration acceptable to the Commission. The Commission considers the non-compete and non-solicitation obligations contained in Clause 16.1 of the SPA to be directly related and necessary to the implementation of the Proposed Transaction insofar as they relate to the State.

45. The Commission notes that the restriction contained in Clause [...] of the SPA places a [...] on [...] for a period of [...]. The Commission has reached a view that Clause [...] of the SPA goes beyond the scope of the Proposed Transaction to impose an obligation on [...], and is not directly related and necessary to the implementation of the Proposed Transaction. Therefore, the Commission considers that Clause [...] of the SPA should not benefit from the protections offered by section 4(8) and 5(3) of the Act.

Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition, whereby MM Packaging GmbH would acquire 100% of the shares in, and sole control over, ESNT Packaging & Securing Solutions Limited and its affiliated companies (including the Irish subsidiary, Essentra Packaging Ireland Limited), as well as 100% of the shares in Essentra Packaging US Inc., from Essentra International Limited and US Newco LLC, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Brian McHugh

Member

Competition and Consumer Protection Commission